

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

<b>MORGAN, LEWIS &amp; BOCKIUS LLP,</b>	)	
<b>Plaintiff,</b>	)	
	)	<b>No. 08-cv-2748</b>
<b>v.</b>	)	
	)	<b>Judge: Rebecca R. Pallmeyer</b>
<b>CITY OF EAST CHICAGO,</b>	)	<b>Magistrate Judge:</b>
<b>Defendant.</b>	)	<b>Sidney I. Schenkier</b>

**MOTION OF THE DEFENDANT, CITY OF EAST CHICAGO,  
TO STRIKE THE AFFIDAVIT OF MS. CLARE D'AGOSTINO**

The Defendant, City of East Chicago, ("East Chicago"), by and through its attorneys, Eichhorn & Eichhorn, LLP, requests that the Court enter an order which strikes the Affidavit of Ms. Clare D'Agostino which is attached as Exhibit A to the Plaintiff's Memorandum in support of its Motion To Remand, [DE 15, Exhibit A], for the reasons set forth in East Chicago's supporting Brief.

Respectfully submitted,

**EICHHORN & EICHHORN, LLP**

By: s/Robert J. Feldt  
One of the attorneys for the Defendant,  
City of East Chicago

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**CERTIFICATE OF SERVICE**

I, Robert J. Feldt, hereby certify that on the 10<sup>th</sup> day of July, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

F. Thomas Hecht  
Tina B. Solis  
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s/Robert J. Feldt  
Robert J. Feldt

**EXHIBIT A TO THE JULY 10, 2008  
MOTION TO STRIKE THE  
AFFIDAVIT OF  
MS. CLARE D'AGOSTINO  
OF THE DEFENDANT,  
CITY OF EAST CHICAGO**

Clare D'Agostino July 3, 2008

1           IN THE DISTRICT COURT OF THE UNITED STATES  
2                   FOR THE NORTHERN DISTRICT OF ILLINOIS  
3                   EASTERN DIVISION

4           MORGAN, LEWIS & BOCKIUS LLP,           )

5                   Plaintiff,           )

6           -vs-           )

No. 08 CV 2748

7           CITY OF EAST CHICAGO,           )

8                   Defendant.           )

9  
10           Deposition of CLARE D'AGOSTINO via telephone, taken  
11 before DONNA L. POLICICCHIO, C.S.R., and Notary Public,  
12 pursuant to the Federal Rules of Civil Procedure for the  
13 United States District Courts pertaining to the taking of  
14 depositions, at 200 Russell Street, Eighth Floor,  
15 Hammond, Indiana, commencing at 1:02 p.m., on the 3rd day  
16 of July, 2008.

17  
18  
19  
20  
21  
22  
23  
24

Blumberg No. 5114  
DEFENDANT'S  
EXHIBIT  
A

1 are marked 1 through 4 as well as a copy of the  
2 notice and the subpoena?

3 A I do.

4 Q Okay. I'm going to ask you for the time  
5 being to set them aside because there are certain  
6 things I'm going to ask you to try to find out  
7 whether you know or don't know based upon not  
8 referring to documents. So can you do so, please?

9 A Sure.

10 Q Have you brought any documents with you other  
11 than those four exhibits and the notice and the  
12 subpoena?

13 A I have not.

14 Q Okay. Go ahead then and tell me where you  
15 work.

16 A Where I work?

17 Q Who do you work for?

18 A I work for Morgan, Lewis & Bockius LLP.

19 Q Okay. And that's a limited liability  
20 partnership?

21 A It is.

22 Q Is that a Pennsylvania limited liability  
23 partnership?

24 A It is.

1 Q And where is the location where you work for  
2 Morgan, Lewis & Bockius?

3 A In Philadelphia, Pennsylvania.

4 Q Where do you live?

5 A In Philadelphia, Pennsylvania.

6 Q Are you a domicile of the State of  
7 Pennsylvania?

8 A I am.

9 Q How long have you lived there?

10 A I have lived in Pennsylvania for more than  
11 20 years.

12 Q Okay. Do you have any intention of leaving  
13 your current place of domicile?

14 A I do not.

15 Q How long have you worked for Morgan, Lewis &  
16 Bockius?

17 A 23 years.

18 Q Could you start at the beginning and give me  
19 the inclusive dates of employment and the title, if  
20 any, that you held over those 23 years?

21 A I joined Morgan, Lewis & Bockius in  
22 October 1985, and I was a general administrator based  
23 in the Philadelphia office with certain firm-wide  
24 responsibilities. Relatively quickly I was promoted

1 to the position of management analyst. During the  
2 time that I was attending law school, which I  
3 attended law school while employed by Morgan, Lewis &  
4 Bockius, I was promoted to the position of section  
5 administrator for the business and finance practice  
6 group, and then most recently in 1994 I was promoted  
7 into what was the early beginnings of the position  
8 that I have today, and that has developed into the  
9 role of assistant counsel to the firm.

10 Q Okay. Let me start with the first position,  
11 the general administrative position.

12 Could you describe for me the types of  
13 things that you did in that job?

14 A I was involved with various space expansion  
15 plans working with architects and contractors as we  
16 expanded space within the firm. I worked with  
17 various vendors buying different things for the firm,  
18 services, goods that we needed. I was also involved  
19 with supervising the purchasing person at that point.

20 Q Can you answer the same question then with  
21 regard to your position as a management analyst?

22 A When I was the management analyst, I was  
23 asked to begin reviewing various processes that the  
24 firm was involved in with the hope that we could make

1 things more efficient. I was involved in the  
2 utilization of staff, particularly the legal staff,  
3 that is. I analyzed various cost recovery programs  
4 that we had at that point, and I was also involved  
5 with various analyses of some benefit with regard to  
6 fee generation, accounts receivable, and those sorts  
7 of things.

8 When I moved into the business and finance  
9 practice group as a section administrator, I worked  
10 directly with the section leader and the deputy  
11 leader. Those positions have actually now been  
12 changed to practice group leader, but at that point  
13 we called them section leaders for the business and  
14 finance practice group. And I assisted the two  
15 leaders in the management and organization of the  
16 section for a variety of things, client relationship  
17 issues, budgeting for them, assisting with  
18 utilization, working very closely with lateral  
19 partners before the lateral partners -- when they  
20 were potential lateral partners, and then as they  
21 joined the firm, helping them to integrate their  
22 practices in a variety of ways.

23 Q Okay.

24 A Then when I first took the position that has



1 become assistant counsel to the firm, it was actually  
2 called assistant to the firm managing partner,  
3 because at that point the person who led the firm,  
4 the title was firm managing partner. Today it  
5 happens to be firm chair in the reorganization that  
6 we undertook some ten years ago probably at this  
7 point. And I began assisting the firm managing  
8 partner with a variety of issues affecting the firm,  
9 legal type issues, but primarily my responsibilities  
10 were in the area of risk management, particularly  
11 with regards to new business intake, and I continued  
12 my responsibilities working very closely with lateral  
13 partners.

14 Over the years as the firm has grown and my  
15 experience level has grown, I have undertaken more  
16 responsibilities. I assist with many contractual  
17 issues where the firm is contracting to acquire goods  
18 or services other than in the area of real estate  
19 where our real estate specialists take care of that.  
20 And I continue to be involved with risk management,  
21 conflicts of interest issues, assisting our partners  
22 in resolving those issues, sometimes working directly  
23 with clients on those issues, and generally assisting  
24 the partnership in the area of professional

1 can go ahead. I think the question has already been  
2 asked and answered, but she's welcome to answer it  
3 again.

4 A You previously asked me to make a statement,  
5 and I made an estimate of 450 being U.S. citizens.

6 BY MR. FELDT:

7 Q Okay. Does that mean then 436 of the 450 are  
8 U.S. citizens who are domiciled within one of the 50  
9 United States?

10 A It does.

11 Q Are there other people who serve in the same  
12 position as you to the partnership?

13 A There is not.

14 Q Do you have one superior?

15 A Yes.

16 Q And that would be --

17 A That would be the general counsel to the firm.

18 Q And who is that?

19 A The person's name is Michael, M-I-C-H-A-E-L,  
20 Bloom, B-L-O-O-M.

21 Q How does a person become a partner with  
22 Morgan Lewis?

23 MS. SOLIS: Objection. I think that's a little  
24 vague, but go ahead, Clare, if you know.

1 A Multiple, multiple times.

2 Q When is the last time that you saw Mr. Lubar?

3 A The last time I saw him in person was at a  
4 farewell gathering in our London office for a  
5 colleague who was leaving the firm, and it was  
6 sometime late 2006 in the winter months.

7 Q Did you speak to Mr. Lubar at that time?

8 A I did.

9 Q What did you talk about?

10 A All sorts of different things. It was a  
11 social event. It was the farewell of a long-standing  
12 employee of the firm. We talked about how long we  
13 both had known this particular lady. We talked about  
14 him being in London and me happening to be in London  
15 when this event was going on. It was a social event.

16 Q Prior to that time, when is the most recent  
17 time that you saw Mr. Lubar?

18 A I saw him before that probably in the  
19 Philadelphia office, but I wouldn't like to hazard a  
20 guess as to when it was compared to the party that I  
21 saw him at.

22 Q Is there any way you can pin it down to a  
23 year?

24 A Oh, it would have been the same year.

1 Q Do you remember what you discussed at that  
2 point?

3 A I do not.

4 Q How about the most recent time before that  
5 that you saw Mr. Lubar?

6 A The most recent time -- no, I couldn't guess.

7 Q Is there any particular time that you saw  
8 Mr. Lubar that you can perhaps associate it with an  
9 event as opposed to a year like this farewell  
10 gathering that we haven't already talked about?

11 A No, I don't think so.

12 Q Have you been to Mr. Lubar's apartment in  
13 London?

14 A I have not.

15 Q How about his apartment in New York?

16 A I have not.

17 Q Do you know if he owns any property besides  
18 his apartment in London or his apartment in New York?

19 A I do not know.

20 Q Do you know if he's married?

21 A I do.

22 Q Is he married?

23 A He is.

24 Q What's his wife's name?

1 A Dominique.

2 Q Have you met his wife?

3 A I have not.

4 Q Does he have children?

5 A He does.

6 Q How many and their names, if you know?

7 A I do not know.

8 Q Do you know where Dominique lives?

9 A I do not.

10 Q Do you know where his children live?

11 A I do not.

12 Q Do you know relative to any other location  
13 how much time Mr. Lubar over the past, say, two years  
14 has been in London versus some other location?

15 MS. SOLIS: Objection. Vague. You can go ahead  
16 and answer, Clare.

17 A It would be impossible for me to answer  
18 whether Mr. Lubar is in London, some other European  
19 country, some of the Asian countries, or in the  
20 United States and to come up with a percentage of  
21 where he is during any given period of time.

22 BY MR. FELDT:

23 Q That's kind of what I was getting at.

24 In your role do you become familiar with or

1 have access to his travel schedule?

2 A I do not.

3 Q Do you know how many times he's been in the  
4 United States in the year 2008?

5 A I do not.

6 Q Do you know where he was on the day that City  
7 of East Chicago filed its notice of removal May 12th,  
8 2008?

9 A I do not.

10 Q Do you know anything about where he keeps his  
11 bank accounts?

12 A I have certain information from the various  
13 documents that were produced and which were shared  
14 with me showing where certain accounts are, so yes.

15 Q In your normal activities in your job, would  
16 you have reason to see those documents or is the only  
17 reason you saw them because we asked for certain  
18 discovery in this litigation?

19 A That is correct, the latter.

20 Q The latter?

21 A The latter.

22 Q Have you ever -- Well, let me back up just a  
23 second.

24 Does Morgan Lewis have a mandatory

1 relevance, it certainly goes to his intent of  
2 maintaining a domicile if he's nearing retirement,  
3 and obviously I'm not getting to ask him that  
4 question because you've objected to producing him. I  
5 shouldn't have to explain the relevance because  
6 relevance is not a basis for directing a witness not  
7 to answer, and if it's confidential information, we  
8 certainly can agree that the testimony is subject to  
9 the confidentiality order that's already in place.

10 MS. SOLIS: Well, I think there is an easier way  
11 to get your answer. Why don't you just ask Clare  
12 that direct question. I mean, if that's what you're  
13 looking for is if he has an intent to move when he  
14 retires, I don't know, maybe she knows that. Why  
15 don't you just ask the direct question.

16 MR. FELDT: Well, I can, and I can ask the other  
17 question as well, but I'll ask her that question if  
18 you're telling me that you're going to stand on your  
19 objections.

20 MS. SOLIS: We're going to stand on our objection  
21 on that one.

22 MR. FELDT: All right.

23 BY MR. FELDT:

24 Q All right. To come back to Mr. Lubar,



1 Ms. D'Agostino, do you know anything about where he  
2 was born or grew up?

3 A I do.

4 Q Where?

5 A He was born in Washington D.C.

6 Q Did he grow up there as well?

7 A I don't know that.

8 Q Do you know if he has extended family  
9 somewhere in the United States, brothers, sisters,  
10 aunts, uncles?

11 A I do not know.

12 Q All right. Do you know if his family has a  
13 family home or estate or farm or anything like that  
14 in the U.S.?

15 A I do not know.

16 Q Apart from his apartment in New York, do you  
17 know if his family owns any other property in the  
18 United States?

19 A I do not.

20 Q Have you ever discussed with Mr. Lubar what  
21 he intends to do as far as retirement goes?

22 A I have not.

23 Q Have you ever discussed with Mr. Lubar where  
24 he intended to live as of May 11th, 2008?



1 A Very recently thereafter, yes.

2 Q Prior to May 12th, 2008, had you ever  
3 discussed with Mr. Lubar where he intended to remain  
4 living as a private residence for any particular  
5 period of time?

6 MS. SOLIS: Objection. Go ahead, Clare.

7 A I have discussed with Mr. Lubar and he had  
8 shared with me his intent not to leave the United  
9 Kingdom.

10 BY MR. FELDT:

11 Q When was that discussion?

12 A The most recent discussion was in preparation  
13 for my declaration.

14 Q Okay. My question was, before May 12th,  
15 2008, had you ever had such a discussion with  
16 Mr. Lubar?

17 A Yes.

18 Q When was that discussion?

19 A It was in preparation for another  
20 declaration, and I cannot give you the specific  
21 months and year off the top of my head.

22 Q Was that for the Swiger matter?

23 A It was.

24 Q Apart from speaking to Mr. Lubar in preparing

1 a declaration for litigation purposes, have you ever  
2 talked with Mr. Lubar about where he intended to  
3 live?

4 MS. SOLIS: Objection. Go ahead, Clare.

5 A No.

6 BY MR. FELDT:

7 Q Have you obtained any information about  
8 Mr. Lubar's intent as to where he was going to live  
9 other than in speaking to him in these two  
10 conversations you've described?

11 MS. SOLIS: Objection. Form. You can go ahead  
12 and answer, Clare. I'm just making my objections for  
13 the record.

14 BY MR. FELDT:

15 Q Let me restate it since there is a form  
16 objection.

17 Other than these two occasions for preparing  
18 these declarations, do you have information from any  
19 other source about Mr. Lubar's intent about where he  
20 wished to live as his private residence?

21 A No.

22 Q In your declaration you indicated that he is  
23 both a citizen of the United States and the United  
24 Kingdom, is that correct?

1 A He has not.

2 Q All right. I'm going to change subjects to  
3 Ms. Yano now.

4 Do you know Lisa Yano?

5 A I do.

6 Q How do you know her?

7 A I know her as a partner of Morgan Lewis &  
8 Bockius. I have spoken with her on the telephone. I  
9 have exchanged e-mails and I have met her on one  
10 occasion.

11 Q When was the one occasion?

12 A That occasion was after she became a partner  
13 of the firm last year, she was visiting the  
14 Philadelphia office, and she stopped by my office to  
15 introduce herself.

16 Q Had you had some contact with her before  
17 then?

18 A I had.

19 Q What would the circumstances have been?

20 A Her arrival as a partner in our Tokyo office.

21 Q Was that an in-person meeting in Tokyo or  
22 some sort of phone discussion?

23 A For me it was a phone discussion.

24 Q Did you have any contact with her before she

1 MR. FELDT: Certainly, certainly. That's why I  
2 wanted to clarify.

3 MS. SOLIS: Go ahead, Clare. I'm sorry to  
4 interrupt.

5 THE WITNESS: We spoke in person or we shared  
6 e-mails about various business issues with regards to  
7 the firm. I specifically recollect an interaction  
8 with regard to continuing legal education. We also  
9 have spoken about licensing, the licensing of lawyers  
10 within the firm, and we have talked generally about  
11 particular client relationships.

12 BY MR. FELDT:

13 Q When you say licensing, you mean law license?

14 A Yes.

15 Q All right. Do you know where Ms. Yano's law  
16 license is held, what state or what country?

17 A I do.

18 Q In what state or country is she licensed to  
19 practice law?

20 A She's licensed in New York, California, and  
21 she has a special legal license in Japan, which I  
22 would hate to hesitate to pronounce, but I'm sure we  
23 can pick it up off of her biography.

24 Q All right. How about Mr. Lubar?

1           A     Mr. Lubar is admitted in the State of  
2     Maryland. He is on an inactive status in the  
3     District of Columbia. The District of Columbia is  
4     one jurisdiction where by paying a certain amount of  
5     money you can keep your license in inactive status  
6     and you can reactivate it by doing certain things.  
7     He's also registered as a foreign lawyer in the  
8     United Kingdom.

9           Q     Have either Ms. Yano or Mr. Lubar terminated  
10    any law licenses?

11          MS. SOLIS: Objection. Form. In terms of what  
12    time?

13          MR. FELDT: Any time ever.

14          MS. SOLIS: Clare, you may go ahead and answer.

15          A     Mr. Lubar allowed his District of Columbia  
16    license to go into inactive status.

17    BY MR. FELDT:

18          Q     I know. My question was terminate.

19          A     I do not know the answer.

20          Q     In the various meeting or phone calls or  
21    e-mails with Ms. Yano, have you ever discussed  
22    anything about her personal life?

23          A     I have not.

24          Q     Do you know where she was born?

1 A I know the state but not the city.

2 Q What is the state?

3 A New Jersey.

4 Q Do you know where she grew up?

5 A I do not.

6 Q Do you know where she went to school?

7 A I know where she went to law school.

8 Q Which was --

9 A Yale.

10 Q Do you know if she has any brothers or  
11 sisters?

12 A I do not.

13 Q Do you know if her parents are alive?

14 A I do not.

15 Q Do you know if her family owns any property  
16 in the United States?

17 A I do not.

18 Q Is she married?

19 A I believe she is, yes. To the best of my  
20 knowledge, the answer is yes.

21 Q Is that based upon reviewing a document or  
22 because you've discussed it with her?

23 A It's based upon legal directories that are  
24 maintained within the firm where she has a spouse

1 listed.

2 Q All right. How about children, do you know  
3 if she has any children?

4 A I do.

5 Q How many children?

6 A I believe she has two.

7 Q Ages and names, if you know?

8 A I do not know.

9 Q Do you know where her children live?

10 A I do.

11 Q Where?

12 A They live with her in Tokyo.

13 Q And her husband?

14 A I do not know.

15 Q Do you know if she or her husband own any  
16 property outside of Tokyo?

17 A I do not.

18 Q The building where she lives in Tokyo, do you  
19 know what kind of building it is? Is it an apartment  
20 building, a home, a condominium? Do you know  
21 anything about it?

22 A I do not know.

23 Q Do you know if she owns or rents?

24 A I do not know.



1 Q Do you know how much time she spends in Japan  
2 as opposed to traveling abroad?

3 A I can't answer that question.

4 Q As with Mr. Lubar, can I assume that you  
5 don't have any purpose in your job in knowing her  
6 travel itinerary?

7 A That's correct.

8 Q Would you know why on her tax return the home  
9 address for Ms. Yano is listed as the Morgan, Lewis &  
10 Bockius office in Tokyo?

11 A I do not.

12 Q Mr. Lubar's and Ms. Yano's business cards  
13 have been produced to us. Let me start with  
14 Mr. Lubar's business card. Does it have the address  
15 for Morgan Lewis' London office on that business  
16 card?

17 A It does.

18 Q Does it have any kind of a resident address  
19 for Mr. Lubar?

20 A It does not.

21 Q If Mr. Lubar worked out of the London office  
22 but lived in New York, would he still have Morgan  
23 Lewis' London office listed on his business card?

24 MS. SOLIS: Objection. I think that calls for



1 speculation, but, Clare, go ahead, if you can.

2 A If any lawyer, Mr. Lubar as we're talking  
3 about, is resident in a particular office of the  
4 firm, Mr. Lubar for London, the person has business  
5 cards with their resident office.

6 BY MR. FELDT:

7 Q Okay. You've used the term "resident office."  
8 by that do you mean works out of that office?

9 A I do.

10 Q You don't mean physically living there?

11 A No.

12 Q So in Ms. Yano's case as well then, if she  
13 lived in San Francisco but worked out of the Tokyo  
14 office, she would still have the Tokyo office on her  
15 business card?

16 A She would.

17 Q Do you know if Mr. Lubar pays real estate  
18 taxes in the United Kingdom?

19 A I do.

20 Q Do you know if he pays real estate taxes in  
21 the United States?

22 A I do not.

23 Q Do you know anything about Mr. Lubar's  
24 apartment either in London or in New York, about his

1 Ms. Yano is living in Tokyo in the way that I live in  
2 Philadelphia, Pennsylvania. I live here. That's  
3 what I meant.

4 Q I'm just making a note to myself, so bear  
5 with me.

6 Do you know how much time Mr. Lubar spends  
7 in London in his private residence on a monthly  
8 basis?

9 A I believe that we've already discussed that  
10 in a slightly different way and we concluded that I  
11 do not have access to either Mr. Lubar or, if you're  
12 going there, Ms. Yano's travel arrangements, so I  
13 cannot answer that question.

14 Q Okay. I appreciate that. I'm asking the  
15 question in a specific form, so bear with me.

16 I'm going to ask you the same question with  
17 regard to Mr. Lubar's apartment in New York. Do you  
18 know how much time Mr. Lubar spends in his apartment  
19 in New York on a monthly basis?

20 A Personally, I do not.

21 Q In Paragraph 3 then, when you say  
22 "Specifically, Charles G. Lubar is a partner resident  
23 in our London office," does that mean that you  
24 think -- or do you use that term to mean that he

1 works out of the London office?

2 A That is correct. It is a term that we use  
3 here when we talk about where partners -- anyone is  
4 working, I would say they are resident in, Mr. Lubar,  
5 the London office. If someone was speaking about me,  
6 they would say I am resident in the Philadelphia  
7 office.

8 Q And when you say "here," you mean within  
9 Morgan Lewis?

10 A Yes, within Morgan Lewis. That's how we talk  
11 about people's office location.

12 Q Now, you indicate in Paragraph 3 "Mr. Lubar  
13 has no immediate plans to leave the United Kingdom  
14 and to return to the U.S. to live on a permanent  
15 basis."

16 What is that based upon?

17 A That is based upon interaction with  
18 Mr. Lubar, I believe it was via e-mail, asking him  
19 about his intent.

20 Q Okay. And when was the e-mail?

21 A Around the end of May or the beginning of  
22 June.

23 Q All right. Did you initiate the e-mail?

24 MS. SOLIS: I'm sorry. You cut out a little bit,

1 Rob. Can we have that one again?

2 BY MR. FELDT:

3 Q Did you initiate the e-mail?

4 A I don't remember.

5 Q Do you recall if he sent the e-mail in  
6 response to a phone call from you?

7 A I do not remember.

8 Q Do you recall if he sent the e-mail in  
9 response to some form of question from you regardless  
10 of whether it took an electronic or a telephone form?

11 A It would have been definitely in relation to  
12 a question. I do not recollect whether it was via  
13 telephone, via e-mail. I specifically recollect that  
14 we were in touch with Mr. Lubar to let him know that  
15 I needed to make a declaration similar to before and  
16 that we needed to discuss issues that had already  
17 been discussed in preparation for an earlier  
18 declaration.

19 Q Okay.

20 A That's my recollection.

21 Q And when you say an earlier declaration, you  
22 mean in the Swiger case?

23 A I do.

24 MR. FELDT: Okay. I got to ask, Tina, do you

1 have this e-mail? Are you aware of this e-mail?

2 MS. SOLIS: Are you making a request for it?

3 MR. FELDT: I thought we did.

4 MS. SOLIS: I do not have it, but that does not  
5 mean that I cannot ask the client for it.

6 MR. FELDT: Okay. Well, maybe you're answering  
7 my question. You didn't see it and determine it to  
8 be nonresponsive?

9 MS. SOLIS: My answer is the same as it was when  
10 we spoke the other day.

11 MR. FELDT: Okay. Well, I personally think it's  
12 responsive to our requests.

13 MS. SOLIS: I think a lot of that depends who  
14 else may be on that e-mail, but --

15 MR. FELDT: Well, I obviously don't know anything  
16 about that.

17 BY MR. FELDT:

18 Q Ms. D'Agostino, without talking about who  
19 else may have received the e-mail, other information  
20 that may be in the e-mail other than specifically  
21 with regard to the statement that serves as the basis  
22 for this sentence in Paragraph 3, "Mr. Lubar has no  
23 immediate plans to leave the United Kingdom and to  
24 return to the U.S. to live on a permanent basis," do

1 you recall the text that Mr. Lubar used to convey  
2 that thought to you that resulted in this sentence in  
3 Paragraph 3 of your declaration?

4 A Not specifically.

5 Q Did he specifically use the word "permanent"?

6 MS. SOLIS: Objection. Asked and answered.

7 BY MR. FELDT:

8 Q This is more precise, but is the word  
9 "permanent" --

10 MS. SOLIS: She can't recall what he said, but go  
11 ahead.

12 BY MR. FELDT:

13 Q Is the word "permanent" your word or his?

14 A I don't remember.

15 Q Okay. Then I guess I want to ask you the  
16 same question about the sentence in Paragraph 4 that  
17 deals with "partner resident," and is that the same  
18 as you said about Mr. Lubar that it means she works  
19 in the Tokyo office?

20 A It is, that's correct.

21 Q Then there is a sentence, "Ms. Yano has  
22 resided in Japan continuously since 1992."

23 What is that based upon?

24 A That is based upon telephone communication,

1 e-mail communication between Ms. Yano and I when we  
2 were establishing certain facts about Ms. Yano not  
3 having had the benefit of earlier preparation as we  
4 did with Mr. Lubar and is he ready to make this  
5 statement.

6 Q You mean oral information in discussing it  
7 with her specifically?

8 A Yes. I specifically recollect leaving voice  
9 mail messages, receiving voice mail messages, and I  
10 do believe there was an e-mail too. The time  
11 difference between Philadelphia and Tokyo sometimes  
12 makes direct person-to-person communication sometimes  
13 difficult, so we find ourselves sometimes exchanging  
14 voice mails or e-mails, of course.

15 Q I understand that. I guess I would have a  
16 similar comment about any e-mail, that it's  
17 responsive, but let me move on to the voice mail  
18 message.

19 Assuming that there was a voice mail  
20 message, is that something you retained?

21 A It is not.

22 Q In Paragraph 4 there is a sentence "Ms. Yano  
23 has no immediate plans to leave Japan and to return  
24 to the U.S. to live on a permanent basis."



1 Where does that information come from?

2 A From either the exchange of voice mails or  
3 the exchange of e-mails. The exact one of those two  
4 places I cannot answer at this point.

5 Q Can you recall ever specifically discussing  
6 not via some voice mail recorded or e-mail but  
7 actually talking directly on the telephone or in  
8 person with Ms. Yano about whether she intends to  
9 stay in Japan or leaving Japan or return to the U.S.?

10 A No, not person to person.

11 Q And the word "permanent" in that sentence, do  
12 you recall if that came from her in the voice mail or  
13 e-mail, whatever form the communication took, or is  
14 that your word?

15 A I do not recollect.

16 MR. FELDT: All right. I'll pass the witness.

17 EXAMINATION

18 BY MS. SOLIS:

19 Q Ms. D'Agostino, I just have a couple  
20 follow-up questions.

21 Do you remember when Mr. Feldt was asking  
22 you the last time you saw Mr. Lubar person to person?  
23 Do you remember that line of questioning?

24 A Yes.



1 MR. FELDT: That's all still information from  
2 him, right?

3 MS. SOLIS: Well, not if she visibly sees him  
4 there. I think that's seeing it with her own two  
5 eyes. I just want to make sure the record is clear.

6 BY MR. FELDT:

7 Q Do you have any information about Mr. Lubar's  
8 intent other than what he's told you?

9 A I do not.

10 Q Do you have any information -- let me clarify  
11 that question.

12 Do you have any information about  
13 Mr. Lubar's intent as to where he will live or where  
14 he has considered to be his domicile other than what  
15 he has told you?

16 A I have not.

17 Q Do you have any information about Ms. Yano's  
18 intent about where she intends to live or where she  
19 has intended to live in the past or what she  
20 considers to be her domicile other than what she has  
21 told you?

22 A I have not.

23 MR. FELDT: I'll pass the witness.

24

**EXHIBIT B TO THE JULY 10, 2008  
MOTION TO STRIKE THE  
AFFIDAVIT OF  
MS. CLARE D'AGOSTINO  
OF THE DEFENDANT,  
CITY OF EAST CHICAGO**

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

MORGAN, LEWIS & BOCKIUS LLP,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 08 CV 2748
	)	Judge Pallmeyer
CITY OF EAST CHICAGO,	)	Magistrate Judge Schenkier
	)	
Defendant.	)	

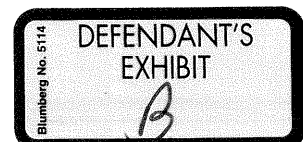
**PLAINTIFF'S RESPONSES AND OBJECTIONS TO  
DEFENDANT'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Federal Rules of Civil Procedure 26 and 34, Plaintiff Morgan, Lewis & Bockius LLP ("Plaintiff" or "Morgan Lewis"), hereby serves its Responses and Objections to Defendant the City of East Chicago's ("Defendant" or "East Chicago") First Requests for Production of Documents. Morgan Lewis reserves the right to supplement or amend its Objections and Responses to these Requests for Production in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

**GENERAL OBJECTIONS**

Morgan Lewis objects generally to East Chicago's First Requests for Production of Documents to the extent that they call for information protected by the attorney-client privilege, attorney work product doctrine, or any other applicable privilege or defense.

Morgan Lewis also objects generally to East Chicago's First Requests for Production of Documents to the extent they impose burdens, obligations, or requirements in excess of those required or permitted by the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Northern District of Illinois, or any other applicable rule or order issued by the Court.



Morgan Lewis further objects generally to East Chicago's First Requests for Production of Documents on the grounds they are vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Morgan Lewis further objects generally to East Chicago's First Requests for Production of Documents to the extent they contain no time limitation and are, therefore, temporally overbroad.

Morgan Lewis further objects generally to East Chicago's First Requests for Production of Documents to the extent the "Definition and Instructions" contained therein are overly broad.

Morgan Lewis further objects generally to East Chicago's First Requests for Production of Documents to the extent they exceed the scope of discovery permitted under the Court Order, dated June 9, 2008, permitting discovery on issues germane to the Motion to Remand.

Morgan Lewis further objects generally to East Chicago's First Requests for Production of Documents to the extent that the information and/or documents they seek is available from public sources.

Morgan Lewis further objects generally to East Chicago's First Requests for Production of Documents to the extent that the information and/or documents they seek is unreasonably cumulative, duplicative or obtainable from some other source that is more convenient, less burdensome or less expensive.

Subject to and without waiver of these General Objections, which are expressly incorporated by reference into each of the responses below, Morgan Lewis responds

more specifically.

**SPECIFIC OBJECTIONS AND/OR RESPONSES**  
(in addition to all General Objections)

**REQUESTS FOR DOCUMENTS**

1. All documents upon which Ms. Clare D'Agostino relied with regard to her Declaration of June 4, 2008.

**OBJECTIONS AND/OR RESPONSE:** Morgan Lewis responds that Clare D'Agostino ("Ms. D'Agostino") relied on documents maintained by Morgan Lewis in the ordinary course of business, including information from various files and/or databases on residence and the information available on the Morgan Lewis website regarding Charles Lubar ("Mr. Lubar") and Lisa Yano ("Ms. Yano"). This information and documents relevant to the Motion to Remand will be produced.

2. All documents utilized as the basis for the representations about Mr. Lubar's citizenship, domicile or partnership in the *Swiger* matter, Civil Action No. 05-CV-5725, United States District Court for the Eastern District of Pennsylvania.

**OBJECTIONS AND/OR RESPONSE:** Morgan Lewis will produce the first page of Mr. Lubar's 2005 United Kingdom tax return (ML00128); the first page of Mr. Lubar's 2004 United States tax return (ML00129); statements for bar dues paid by Mr. Lubar in 2004 and 2005 to the Maryland Bar; (ML00130-131); statements for bar dues paid by Mr. Lubar in 2004 and 2005 to the District of Columbia Bar (as an inactive member) (ML00132-133); a November 2005 statement from the Law Society regarding Mr. Lubar's registration as a Registered Foreign Lawyer (ML00134); Mr. Lubar's Washington, D.C. driver's license (ML00136); a June 2006 bank statement from Mr. Lubar's bank account with Coutts Bank, Geneva, Switzerland (ML00137); a July 2006 bank statement from Mr. Lubar's bank account with SunTrust Bank, Orlando, Florida,

which account is located in Washington, D.C. (ML00138-139); a 2004 interest statement from an account with Fleet National Bank, Scranton, Pennsylvania, relating to Mr. Lubar's payment of New York real estate tax (ML00147); a May 2006 statement from Mr. Lubar's Citigroup Global Markets, Inc. brokerage account (ML00140); January 2006 and March 2006 Chase mortgage loan statements for Mr. Lubar's apartment in New York, New York (ML00142-143); a June 2006 Citibank mortgage account statement for Mr. Lubar's apartment in New York, New York (ML00141); a July 2006 statement for payment of property maintenance fees for residential property owned by Mr. Lubar in London, United Kingdom (ML00144); a January 2006 statement for payment of property maintenance fees for Mr. Lubar's apartment in New York, New York (ML00145); a January 2005 statement regarding payment of real estate taxes for Mr. Lubar's apartment in New York, New York (ML00146); a 2004 United States tax return mortgage interest statement for Mr. Lubar's apartment in New York, New York (ML00148). Each of these documents is redacted so as not to reflect any confidential personal information.

**3. All documents which refer to Mr. Lubar's citizenship and/or domicile.**

**OBJECTIONS AND/OR RESPONSE:** Morgan Lewis will produce all of the documents described in response to Request No. 2 (ML00128-48), as well as Mr. Lubar's United Kingdom passport (ML00001-0037); Mr. Lubar's United States passport (ML00038-00067); Mr. Lubar's certificate of naturalization as a British citizen (ML00155); Mr. Lubar's business card (ML00069); Mr. Lubar's letterhead (ML00070); a statement for bar dues paid in 2007 by Mr. Lubar to the Maryland Bar (ML00071); a statement for bar dues paid in 2008 by Mr. Lubar to the District of Columbia Bar (as an inactive member) (ML00075); Mr. Lubar's 2006 application for renewal as a Registered

Foreign Lawyer (ML00072); a 2008 statement from the Law Society regarding Mr. Lubar's registration as a Registered Foreign Lawyer (ML00073); a June 24, 2008 e-mail from the Solicitors Regulation Authority confirming that Mr. Lubar is a Registered Foreign Lawyer (ML00074); a June 27, 2008 statement from the Solicitors Regulation Authority regarding Mr. Lubar's registration as a Registered Foreign Lawyer (ML00156); the cover sheet of Mr. Lubar's 2006 U.S. tax return (ML00076); the first page of Mr. Lubar's 2006 United States tax return (ML00077); Form 2555 of Mr. Lubar's 2006 United States tax return (ML00078-80); Form 1042-S of Mr. Lubar's 2007 United States tax return (ML00081); the first and second pages of Mr. Lubar's 2007 United Kingdom tax return (ML00082-83); September 2007 and May 2008 account statements from SunTrust Bank, Orlando, Florida which account is located in Washington, D.C. (ML00084-85); a March 2008 account statement for Leumi Bank, Jersey (ML00086); a March 2008 account statement from Citibank, New York, New York (ML00087); a January 2007 account statement from Coutts & Co. Bank, London, United Kingdom (ML00088); a June 2008 statement regarding Mr. Lubar's payment of rent for his apartment in London, United Kingdom (ML00096-97); a January 2008 gas bill for Mr. Lubar's apartment in London, United Kingdom (ML000103); an April 2008 electric bill for Mr. Lubar's apartment in London, United Kingdom (ML00104); a January 2008 tax bill for residential property owned by Mr. Lubar in London, United Kingdom (ML00100); April 2008 and June 2008 statements for Mr. Lubar's payment of property maintenance fees for residential property owned by Mr. Lubar in London, United Kingdom (ML00089, 00092-95); July 2007 and September 2007 statements for Mr. Lubar's payment of property maintenance fees for his apartment in New York, New

York (ML00090-91); April 2008 and May 2008 Citibank mortgage account statements for Mr. Lubar's apartment in New York, New York (ML00098-99); July 2007 and October 2007 gas and electric bills for Mr. Lubar's apartment in New York, New York (ML00101-102). Each of these documents is redacted so as not to reflect any confidential personal information.

**4. All documents which refer to Ms. Yano's citizenship and/or domicile.**

**OBJECTIONS AND/OR RESPONSE:** Morgan Lewis will produce the first page of Ms. Yano's United States passport (ML00105); Ms. Yano's Japanese driver's license (ML00107); Ms. Yano's Certificate of Alien Registration (ML00106); a statement for bar dues paid in 2008 by Ms. Yano to the California Bar (ML00109); a statement for bar dues paid in 2006 by Ms. Yano to the New York Bar (ML00111); a 2007 statement acknowledging Ms. Yano's change of attorney registration information for the New York Bar (ML00112); a 2008 statement from the New York State Unified Court System regarding Ms. Yano's registration as a member of the New York Bar (ML00110); Ms. Yano's Notice for Registration as Foreign Lawyer in Japan (ML00113-115); the Governmental Gazette providing notice of Ms. Yano's registration as a Foreign Lawyer; (ML00116); Ms. Yano's business card (ML00108); the first page of Ms. Yano's 2006 United States tax return (ML00117); an April 2008 bank account statement from Citibank (ML00118); a May 2008 consolidated bank and brokerage account statement from Citibank (ML00119); a May 2008 brokerage account statement from Fidelity Investments (ML00120); a May 2008 Citibank mortgage loan statement for residential property owned by Ms. Yano in Kanagawa-Ken, Japan (ML00121-123); a 2008 property registration statement for residential property owned by Ms. Yano in Kanagawa-Ken,



Japan (ML00125-127); a 2008 tax bill for Ms. Yano's condominium in Tokyo, Japan (ML00124). Each of these documents is redacted so as not to reflect any confidential personal information.

**5. Any document related to or showing that any individual classified as or considered to be a partner with Morgan Lewis is a citizen or domiciliary of the State of Indiana, and for each such individual, provide all partnership documents.**

**OBJECTIONS AND/OR RESPONSE:** Morgan Lewis responds by stating that there are no responsive documents to this request in Morgan Lewis' possession, custody, or control.

**6. All partnership agreements which form the basis for Plaintiff's claims that Mr. Lubar and Ms. Yano are partners of Morgan Lewis.**

**OBJECTIONS AND/OR RESPONSE:** Morgan Lewis objects to this request on the grounds that it is beyond the discovery authorized by the Court on issues related to the Motion to Remand. It is not reasonably calculated to lead to the discovery of admissible evidence. Morgan Lewis further responds by stating that information confirming Mr. Lubar and Ms. Yano's status as Morgan Lewis partners is publicly available on Morgan Lewis' website, on the Martindale-Hubbell Law Directory, and from various other similar sources. Morgan Lewis further responds by producing the letterhead of Mr. Lubar (ML00070) and the business card of Ms. Yano (ML00108), which acknowledge the status of each as "Partner."

**7. All documents which reflect an ownership or occupancy interest in real property held by Mr. Lubar and Ms. Yano, respectively, between January 1, 2002 and the present date.**

**OBJECTIONS AND/OR RESPONSE:** Morgan Lewis will produce the following documents regarding Mr. Lubar: January 2006 and March 2006 Chase

mortgage loan statements for Mr. Lubar's apartment in New York, New York (ML00142-143); a June 2006 Citibank mortgage account statement for Mr. Lubar's apartment in New York, New York (ML00141); a July 2006 statement for payment of property maintenance fees for residential property owned by Mr. Lubar in London, United Kingdom (ML00144); a January 2006 statement for payment of property maintenance fees for Mr. Lubar's apartment in New York, New York (ML00145); a January 2005 statement regarding payment of real estate taxes for Mr. Lubar's apartment in New York, New York (ML00146); a 2004 United States tax return mortgage interest statement for Mr. Lubar's apartment in New York, New York (ML00148); a June 2008 statement regarding Mr. Lubar's payment of rent for his apartment in London, United Kingdom (ML00096-97); a January 2008 gas bill for Mr. Lubar's apartment in London, United Kingdom (ML000103); an April 2008 electric bill for Mr. Lubar's apartment in London, United Kingdom (ML00104); a January 2008 tax bill for residential property owned by Mr. Lubar in London, United Kingdom (ML00100); April 2008 and June 2008 statements for Mr. Lubar's payment of property maintenance fees for residential property owned by Mr. Lubar in London, United Kingdom (ML00089, 00092-95); July 2007 and September 2007 statements for Mr. Lubar's payment of property maintenance fees for his apartment in New York, New York (ML00090-91); April 2008 and May 2008 Citibank mortgage account statements for Mr. Lubar's apartment in New York, New York (ML00098-99); and July 2007 and October 2007 gas and electric bills for Mr. Lubar's apartment in New York, New York (ML00101-102).

Morgan Lewis will produce the following documents regarding Ms. Yano: a May 2008 Citibank mortgage loan statement for residential property owned by Ms. Yano in

1175436-2

Kanagawa-Ken, Japan (ML00121-123); a 2008 property registration statement for residential property owned by Ms. Yano in Kanagawa-Ken, Japan (ML00125-127); and a 2008 tax bill for Ms. Yano's condominium in Tokyo, Japan (ML00124).

8. All documents the Plaintiff utilized in preparing the purported data regarding Mr. Lubar that appears on the Plaintiff's website, which can be found on the World Wide Web at:

<http://www.morganlewis.com/index.cfm/personID/4c4115b6-f068-4acf-99ae-66b044b64144/fromSearch/1/fuseaction/people.viewBio>.

**OBJECTIONS AND/OR RESPONSE:** East Chicago's request for documents encompasses numerous pieces of information and data on Morgan Lewis' website, including, *inter alia*, Mr. Lubar's photograph, practice areas, and civic involvements. Documentation regarding this information clearly is irrelevant to the issues presented by the Motion to Remand in the above-captioned action. In addition, the term "purported data" is vague and undefined, and Morgan Lewis has no basis for determining what information the term refers to. Subject to and without waiver of these objections, Morgan Lewis responds by stating that, upon information and belief, the information in Mr. Lubar's biography on the Morgan Lewis website is based on communications with Mr. Lubar, as well as documents maintained by Morgan Lewis in the ordinary course of business, including information from various files and/or databases. Morgan Lewis further responds by stating that some of the information on Mr. Lubar's biography is publicly available information accessible through the Martindale-Hubbell Law Directory and various other similar sources.

9. All documents the Plaintiff utilized in preparing the purported data regarding Ms. Yano that appears on the Plaintiff's website, which can be found on the World Wide Web at:

<http://www.morganlewis.com/index.cfm/personID/6ad4225b-629b-42b0-813e-28cc993cc35a/fromSearch/1/fuseaction/people.viewBio>.

**OBJECTIONS AND/OR RESPONSE:** East Chicago's request for documents encompasses numerous pieces of information and data on Morgan Lewis' website, including, *inter alia*, Ms. Yano's photograph, practice areas, and civic involvements. Documentation regarding this information clearly is irrelevant to the issues presented by the Motion to Remand in the above-captioned action. In addition, the term "purported data" is vague and undefined, and Morgan Lewis has no basis for determining what information the term refers to. Subject to and without waiver of these objections, Morgan Lewis responds by stating that, upon information and belief, the information in Ms. Yano's biography on the Morgan Lewis website is based on communications with Ms. Yano, as well as documents maintained by Morgan Lewis in the ordinary course of business, including information from various files and/or databases. Morgan Lewis further responds by stating that some of the information on Ms. Yano's biography is publicly available information accessible through the Martindale-Hubbell Law Directory and various other similar sources.

**10. With respect to Mr. Lubar, a copy of all passports held and all information evidencing the issuing nation for each passport.**

**OBJECTIONS AND/OR RESPONSE:** Morgan Lewis will produce Mr. Lubar's United Kingdom passport (ML00001-00037) and Mr. Lubar's United States passport (ML00038-00067), designated as confidential.

**11. With respect to Ms. Yano, a copy of all passports held and all information evidencing the issuing nation for each passport.**

**OBJECTIONS AND/OR RESPONSE:** Morgan Lewis will produce the first page of Ms. Yano's United States passport (ML00105), designated as confidential.

12. All documents related to any naturalization, oath, process, action or test by which Mr. Lubar became a citizen or subject of any nation.

**OBJECTIONS AND/OR RESPONSE:** Morgan Lewis will produce Mr. Lubar's United Kingdom passport (ML00001-00037) and his certificate of naturalization as a British citizen (ML00155), designated as confidential.

13. All documents related to any naturalization, oath, process, action, or test by which Ms. Yano became a citizen or subject of any nation.


**OBJECTIONS AND/OR RESPONSE:** Morgan Lewis responds by stating that there are no responsive documents to this request in Morgan Lewis' possession, custody, or control.

14. All documents upon which the plaintiff relied to support the Motion and Memorandum to Remand this matter.

**OBJECTIONS AND/OR RESPONSE:** Morgan Lewis objects to this request on the ground that it seeks material protected by the attorney-client privilege and work product privilege. Subject to and without waiver of these objections, Morgan Lewis will produce the Declaration of Clare D'Agostino, dated June 4, 2008 (ML00149-150); a copy of Mr. Lubar's biography reproduced from Morgan Lewis' website (ML00151-52); and a copy of Ms. Yano's biography, reproduced from Morgan Lewis' website (ML00153-54).

Dated: June 27, 2008

Respectfully submitted,

  
\_\_\_\_\_  
One of the Attorneys for  
MORGAN, LEWIS & BOCKIUS  
LLP

F. Thomas Hecht (ARDC #1168606)  
Tina B. Solis (ARDC #6242461)

Seth A. Horvath (ARDC #6283110)  
Ungaretti & Harris LLP  
3500 Three First National Plaza  
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Facsimile (312) 977-4405

**CERTIFICATE OF SERVICE**

I, Seth A. Horvath, an attorney, hereby certify that I served a copy of the foregoing **PLAINTIFF'S RESPONSES AND OBJECTIONS TO DEFENDANT'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS** on the attorneys listed below by Federal Express and electronic mail on June 27, 2008 at or before 5:00 p.m.

David C. Jensen, #18395  
Robert J. Feldt, #14284  
Eichhorn & Eichhorn, LLP  
200 Russell Street  
P.O. Box 6328  
Hammond, IN 46325

A handwritten signature in black ink, appearing to read 'S. Horvath', is written over a horizontal line.

Seth A. Horvath

**EXHIBIT C TO THE JULY 10, 2008  
MOTION TO STRIKE THE  
AFFIDAVIT OF  
MS. CLARE D'AGOSTINO  
OF THE DEFENDANT,  
CITY OF EAST CHICAGO**



**United States District Court, Northern District of Illinois**

Name of Assigned Judge or Magistrate Judge	Rebecca R. Pallmeyer <i>RRP</i>	Sitting Judge if Other than Assigned Judge	
<b>CASE NUMBER</b>	08 C 2748	<b>DATE</b>	6/9/2008
<b>CASE TITLE</b>	Morgan, Lewis & Bockius LLP vs. City of East Chicago		

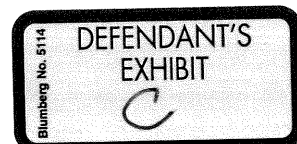
**DOCKET ENTRY TEXT**

Plaintiff's motion to remand [14] entered and continued for briefing. Response 7/10/2008; reply 7/24/2008; ruling 7/31/2008 at 9:00. Parties to proceed promptly with discovery on issues germane to this motion. Plaintiff to respond to written disclosures within 7 days of receipt of Defendant's request, and promptly to produce the affiant for deposition.

Notices mailed by Judicial staff.

00:08

Courtroom Deputy Initials:	ETV
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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MORGAN, LEWIS & BOCKIUS,  
LLP,

Plaintiff,

vs.

CITY OF EAST CHICAGO,

Defendant.

Docket No. 08 C 2748

Chicago, Illinois  
June 9, 2008  
9:36 a.m.

TRANSCRIPT OF PROCEEDINGS - Motion  
BEFORE THE HONORABLE REBECCA R. PALLMEYER

APPEARANCES:

For the Plaintiff:

UNGARETTI & HARRIS, LLP  
BY: MR. F. THOMAS HECHT  
MR. SETH HORVATH  
3500 Three First National Plaza  
Chicago, Illinois 60602

For the Defendant:

EICHHORN & EICHHORN, LLP  
BY: MR. ROBERT J. FELDT  
200 Russell Street, P.O. Box 6328  
Hammond, Indiana 46320

Court Reporter:

FRANCES WARD, CSR, RPR, FCRR  
Official Court Reporter  
219 S. Dearborn Street, Suite 2118  
Chicago, Illinois 60604  
(312) 435-5561  
frances\_ward@ind.uscourts.gov

1 THE CLERK: 08 C 2748, Morgan, Lewis & Bockius  
2 versus City of East Chicago on a motion.

3 MR. HORVATH: Good morning, your Honor.

4 Seth Horvath for plaintiff, Morgan, Lewis &  
5 Bockius.

6 MR. HECHT: Thomas Hecht, your Honor, for Morgan,  
7 Lewis as well.

8 THE COURT: Good morning.

9 MR. FELDT: Rob Feldt for the defendant.

10 THE COURT: Good morning.

11 This is also a motion for remand, correct?

12 MR. HORVATH: That's right, your Honor.

13 THE COURT: Is there a diversity problem?

14 Remind me of the nature of the motion.

15 MR. HORVATH: That's right. Our motion to remand  
16 argues that there is no diversity jurisdiction here. And the  
17 notice of removal that was filed is based entirely on the  
18 idea that there is diversity.

19 So our argument goes that because Morgan,  
20 Lewis & Bockius has two partners that are United States  
21 citizens domiciled abroad, they are stateless for purposes of  
22 diversity jurisdiction.

23 THE COURT: And if you are stateless, you can't  
24 bring a case -- you can't be in federal court; is that right?

25 MR. HORVATH: That's correct, your Honor.

1 THE COURT: Response?

2 MR. FELDT: Well, these are very complicated  
3 factual issues. We were just served with the motion last  
4 Wednesday. We need time to issue, take, and -- take  
5 discovery and brief the response. And I have asked already  
6 for information to try to speed that process up. I was  
7 rejected.

8 So what I would like, if your Honor is willing, is  
9 120 days to issue and obtain written and oral discovery with  
10 a response due 30 days after that.

11 MR. HORVATH: I don't know that 120 days is  
12 necessary on this. I think it's -- I don't think it's that  
13 complicated of an issue.

14 THE COURT: You know, I wouldn't ever set 150 days'  
15 response date on a motion for remand in any event.

16 But it seems to me the argument here is that there  
17 are two members of Morgan, Lewis & Bockius who are not U.S.  
18 citizens and, therefore, that that destroys diversity.

19 MR. FELDT: Correct.

20 THE COURT: That's a legal question.

21 What I think there may be some factual issues  
22 regarding would be those two partners or members. And what I  
23 would suggest is that there be some written discovery on  
24 those individuals and then a response in, say, 30 days.

25 MR. FELDT: If I may, your Honor, there is an

1     affiant who is neither of the two partners that are alleged  
2     to be domiciled abroad. So at the very least, we are  
3     anticipating at least three depositions: the deposition of  
4     the affiant and the deposition of each of the partners who  
5     supposedly are the basis for no diversity jurisdiction.

6             MR. HORVATH: Your Honor, I am not sure that the  
7     depositions of the two partners who are in question here  
8     would be necessary, because the affiant is one of the  
9     assistant general counsel for Morgan, Lewis. And I could  
10    understand, perhaps, if there might be some further inquiry  
11    into her knowledge of the status of these two partners, but I  
12    don't think there is a need to depose the partners who are  
13    U.S. citizens domiciled abroad.

14            MR. FELDT: If I may, your Honor, domicile is an  
15    issue that has to go to the intent of the person involved.  
16    The person who has given the affidavit can only obtain  
17    whatever information on that issue by hearsay and other  
18    inadmissible forms of evidence.

19            Mr. Lubar, I believe his name is, for example, is,  
20    by my estimate, about 68 years old. And he is the one who is  
21    supposedly in London. If it was his intent to retire next  
22    month and move back to the states and he had had that goal  
23    for quite some time, that would be a highly relevant fact.

24            So those kind of issues are the issues that we need  
25    to obtain in order to have a proper response to this motion.

1 THE COURT: Well, first of all, somebody's intent  
2 to move a month from now wouldn't alter the calculus, unless  
3 we are talking about somebody who's on a six-week assignment  
4 or something and that's what puts him in London. That would  
5 be a different story. That person is not a permanent  
6 resident of London. He is just visiting.

7 But you are right that there be some factual issues  
8 along those lines.

9 I guess I am more curious right now about the law  
10 and how it can be that if you have a foreign national -- or  
11 not a foreign national, but somebody residing outside the  
12 United States you can't possibly be in federal court. So I  
13 am more interested in the law myself.

14 That having been said, I think it's appropriate for  
15 you to proceed with the deposition of the affiant and any  
16 documents relating to these two individuals.

17 If you want to depose individuals who are abroad,  
18 that's a very complicated process. And I question the wisdom  
19 of that effort where we are really talking about what I  
20 understand to be a collection action. I think it's a  
21 collection action.

22 So whether it proceeds in state court or federal  
23 court, the real issues are not where does somebody live and  
24 whether he intends to retire, but whether or not there is a  
25 basis to claim that City of East Chicago owes this law firm

1 \$3 million.

2 MR. HORVATH: That's correct, your Honor.

3 THE COURT: I hope we can keep our focus on that  
4 issue.

5 But before that happens, we do need to decide  
6 whether I have got the case or whether somebody else does.

7 So I am going to direct that you proceed with the  
8 deposition of the affiant and any written discovery with  
9 regard to these two, and then respond to the motion to remand  
10 within 30 days.

11 Today is June 9th. So the response to the motion  
12 for remand would be due on July 10th. And then a reply, can  
13 we say July 24th?

14 MR. HECHT: Yes, your Honor, that's fine.

15 MR. HORVATH: That's fine, your Honor.

16 Your Honor, there was also a pretrial conference  
17 scheduled in the case for the 26th of June.

18 THE COURT: Right. We will strike that date. I  
19 think it was June 12th we had it set. Whichever date it is,  
20 it will be stricken.

21 We now have a motion for -- the briefing on the  
22 motion for remand, and why don't we set a date for ruling  
23 sometime after July 24th. I am going to suggest July 31st at  
24 9:00 o'clock.

25 MR. FELDT: In light of the fact that you have only

1 given me 30 days to respond, am I not allowed to take written  
2 discovery? which would have to be expedited to be completed  
3 within the 30 days.

4 THE COURT: The documents you need on this issue I  
5 think counsel should be able to produce within seven days.  
6 So why don't you put together a request and serve that on  
7 them.

8 MR. FELDT: Thank you.

9 THE COURT: Thank you.

10 MR. FELDT: One last issue. There is one other  
11 calendar date. Our responsive pleading is due next week. I  
12 think it's either the 18th or 19th. In light of the pending  
13 motion to remand, can we hold that obligation in abeyance  
14 until after there is a ruling?

15 It was our intent to move to dismiss and ask the  
16 Court to transfer the case to the Northern District of  
17 Indiana. If you are not going to keep the case, we would  
18 just as soon make that motion in state court and not --

19 THE COURT: What's the basis for the motion to  
20 dismiss?

21 MR. FELDT: Contesting personal jurisdiction.

22 THE COURT: Okay. So that, too, would be a matter  
23 of whether it's going here or going there.

24 MR. FELDT: That's my point. And I don't think  
25 that it would be efficient for us to file the motion and then



1 you just simply hold that one in abeyance until you resolve  
2 the remand. If you end up sending it back to state court,  
3 then you won't see the motion at all.

4 THE COURT: Right. I will enter and continue your  
5 response date to the pleadings.

6 All right. July 31st at 9:00 o'clock.

7 In the meantime, the response to the motion for  
8 remand will be filed on July 10th and the reply on July 24th.

9 MR. FELDT: Thank you.

10 MR. HORVATH: Thank you, your Honor.

11 MR. HECHT: Thank you.

12 \* \* \* \* \*

13 I certify that the foregoing is a correct transcript from the  
14 record of proceedings in the above-entitled matter.

15 F\_\_\_\_\_, 2008.  
16 Official Court Reporter  
17  
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19  
20  
21  
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25

AO88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

NORTHERN

DISTRICT OF

ILLINOIS

MORGAN, LEWIS &amp; BOCKIUS LLP

**SUBPOENA IN A CIVIL CASE**

V.

CITY OF EAST CHICAGO

Case Number:<sup>1</sup> 08-cv-2748

TO: CHARLES LUBAR  
c/o F. Thomas Hecht/Tina B. Solis, UNGARETTI & HARRIS  
3500 Three First National Plaza, Chicago, IL 60602

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

UNGARETTI & HARRIS  
3500 Three First National Plaza, Chicago, IL 60602

DATE AND TIME

7/3/08 8:00 a.m. CDT

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Any and all documents responsive to the June 19, 2008 First Requests For Production Of Documents and Requests for Admission, Supporting Interrogatory, And Supporting Request For Production of the Defendant, City of East Chicago.

PLACE

UNGARETTI & HARRIS  
3500 Three First National Plaza, Chicago, IL 60602

DATE AND TIME

7/3/08 8:00 a.m. CDT

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

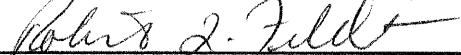
PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE



Attorney for the Defendant

7/1/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

David C. Jensen, Robert J. Feldt, EICHHORN &amp; EICHHORN, LLP, 200 Russell Street, Hammond, IN 46325

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE	PLACE
SERVED	7/1/2008
200 Russell Street Hammond, IN 46325	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
CHARLES LUBAR c/o F. Thomas Hecht/Tina B. Solis	Overnight Mail and E-mail as PDF attachment
SERVED BY (PRINT NAME)	TITLE
Robert J. Feldt	Attorney


## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

7/1/2008

DATE



SIGNATURE OF SERVER

ADDRESS OF SERVER

200 Russell Street, Hammond, IN 46325

Rule 45. Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

**Robert J. Feldt**

---

**From:** "Barbara Cernick" <bcernick@eichhorn-law.com>  
**To:** <tbsolis@uhl.com>  
**Cc:** "Robert Feldt" <rfeldt@eichhorn-law.com>  
**Sent:** Tuesday, July 01, 2008 3:07 PM  
**Attach:** Solis-ltr-re 7-3-08 deps.pdf; Yano-subpoena.pdf; DAgostino Dep Ex 1.pdf; DAgostino Dep Ex 2.pdf; DAgostino Dep Ex 3(1).pdf; DAgostino Dep Ex 3(2).pdf; DAgostino Dep Ex 3(3).pdf; DAgostino Dep Ex 3(4).pdf; DAgostino Dep Ex 4.pdf; DAgostino-subpoena.pdf; Lubar-subpoena.pdf  
**Subject:** Morgan Lewis v. City of East Chicago, Our File No. 411.11197

Sent at the request of Robert J. Feldt, please see the attached correspondence and enclosures to that letter. Hard copies will follow by Federal Express delivery. Thank you. Barbara, Secretary

Barbara R. Cernick  
bcernick@eichhorn-law.com  
Eichhorn & Eichhorn, LLP  
200 Russell Street  
P.O. Box 6328  
Hammond, IN 46325  
(219) 931-0560 - voice  
(219) 931-5370 - facsimile

7/9/2008

## EICHHORN & EICHHORN, LLP

DAVID C. JENSEN\*  
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GREGORY A. CRISMAN  
ALYSSA STAMATAKOS  
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BRETT T. CLAYTON  
MICHAEL D. KARRAS  
CARLY A. BRANDENBURG

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### ATTORNEYS AT LAW

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TOLL FREE NUMBER: (866) 931-0560

FREDERICK F. EICHHORN, JR.  
WILLIAM H. EICHHORN  
RETIRED

\* ALSO ADMITTED IN ILLINOIS  
\*\* ALSO ADMITTED IN ILLINOIS & MINNESOTA

July 1, 2008

PLEASE REPLY TO: Hammond Office

VIA FEDERAL EXPRESS  
and E-MAIL TRANSMISSION

Ms. Tina B. Solis  
**UNGARETTI & HARRIS LLP**  
3500 Three First National Plaza  
Chicago, IL 60602

Re: **Morgan Lewis Bockius, LLP v. City of East Chicago**  
Cause No. 1:08-cv-2748  
Our File No. 411.11197

Dear Ms. Solis:

This will acknowledge my agreement with you to proceed with the deposition of Ms. D'Agostino via a telephonic deposition with all parties calling a central telephone number at 2:00 p.m. EDT, 1:00 p.m. CDT, on July 3, 2008. It is my understanding that you are agreeable to the court reporter being present with me at our offices in Hammond, Indiana and swearing in the witness in Philadelphia via telephone. The court reporter which we have retained is Merrill Legalink, Chicago, Illinois. We would be most appreciative if you could confirm that this process is acceptable to you and your client in writing by return e-mail. The call-in information for this telephone deposition is as follows: dial in number: 877-322-9654, participant code: 510059. A copy of the notice of deposition/subpoena is enclosed.

Copies of the marked exhibits also are enclosed and are attached as PDF files to the electronic version of this letter. They consist of the Plaintiff's Responses And Objections To Defendant's Requests For Admission, Supporting Interrogatory, And Supporting Request For Production, the Plaintiff's Responses And Objections To Defendant's First Requests For Production Of Documents, the documents produced and Ms. D'Agostino's Declaration and attachments. Per your representation during our June 30, 2008 telephone conference, it is my understanding that you have produced all responsive documents and that there are no responsive documents which have been withheld, for example, due to attorney-client privilege, and hence, no privilege log. We would be most appreciative if you could confirm this in writing by return e-mail, as well.

**EICHHORN & EICHHORN, LLP**

Ms. Tina B. Solis  
July 1, 2008  
Page 2

Finally, also enclosed are notices of deposition/subpoenas for Mr. Charles Lubar and Ms. Lisa Yano. As I indicated during our June 30, 2008 telephone conference, these are being submitted to you only to preserve our requests for these depositions for the record. We acknowledge that the Honorable Rebecca P. Pallmeyer already has rejected our request to take these depositions and that you object to these depositions and the notices.

Please contact me if you have any questions or comments.

Very truly yours,

**EICHHORN & EICHHORN, LLP**

By:   
Robert J. Feldt

RJF:brc  
Enclosures

AO88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

NORTHERN

DISTRICT OF

ILLINOIS

MORGAN, LEWIS &amp; BOCKIUS LLP

**SUBPOENA IN A CIVIL CASE**

V.

CITY OF EAST CHICAGO

Case Number:<sup>1</sup> 08-cv-2748

TO: CLARE D'AGOSTINO  
c/o F. Thomas Hecht/Tina B. Solis, UNGARETTI & HARRIS  
3500 Three First National Plaza, Chicago, IL 60602

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case **telephonically**.

PLACE OF DEPOSITION Telephonically at EICHHORN & EICHHORN, LLP (with Court Reporter)  
200 Russell Street, Hammond, IN 46325

DATE AND TIME

7/3/08 2:00 p.m. EDT

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Any and all documents responsive to the June 19, 2008 First Requests For Production Of Documents and Requests for Admission, Supporting Interrogatory, And Supporting Request For Production of the Defendant, City of East Chicago.

PLACE Telephonically at EICHHORN & EICHHORN, LLP (with Court Reporter)  
200 Russell Street, Hammond, IN 46325

DATE AND TIME

7/3/08 2:00 p.m. EDT

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE



Attorney for the Defendant

7/1/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

David C. Jensen, Robert J. Feldt, EICHHORN &amp; EICHHORN, LLP, 200 Russell Street, Hammond, IN 46325

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.



AO88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

	DATE	PLACE
SERVED	7/1/2008	200 Russell Street Hammond, IN 46325
SERVED ON (PRINT NAME)		MANNER OF SERVICE
CLARE D'AGOSTINO c/o F. Thomas Hecht/Tina B. Solis		Overnight Mail and E-mail as PDF attachment
SERVED BY (PRINT NAME)		TITLE
Robert J. Feldt		Attorney


## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

7/1/2008

DATE



SIGNATURE OF SERVER

ADDRESS OF SERVER

200 Russell Street, Hammond, IN 46325

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).



AO88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
UNITED STATES DISTRICT COURT

NORTHERN

DISTRICT OF

ILLINOIS

MORGAN, LEWIS &amp; BOCKIUS LLP

## SUBPOENA IN A CIVIL CASE

V.

CITY OF EAST CHICAGO

Case Number:<sup>1</sup> 08-cv-2748

TO: LISA YANO  
c/o F. Thomas Hecht/Tina B. Solis, UNGARETTI & HARRIS  
3500 Three First National Plaza, Chicago, IL 60602

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

UNGARETTI & HARRIS  
3500 Three First National Plaza, Chicago, IL 60602

DATE AND TIME

7/3/08 11:00 a.m. CDT

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Any and all documents responsive to the June 19, 2008 First Requests For Production Of Documents and Requests for Admission, Supporting Interrogatory, And Supporting Request For Production of the Defendant, City of East Chicago.

PLACE

UNGARETTI & HARRIS  
3500 Three First National Plaza, Chicago, IL 60602

DATE AND TIME

7/3/08 11:00 a.m. CDT

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

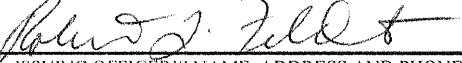
PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE



Attorney for the Defendant

7/1/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

David C. Jensen, Robert J. Feldt, EICHHORN &amp; EICHHORN, LLP, 200 Russell Street, Hammond, IN 46325

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE	PLACE
SERVED	7/1/2008
	200 Russell Street Hammond, IN 46325
SERVED ON (PRINT NAME)	MANNER OF SERVICE
LISA YANO c/o F. Thomas Hecht/Tina B. Solis	Overnight Mail and E-mail as PDF attachment
SERVED BY (PRINT NAME)	TITLE
Robert J. Feldt	Attorney

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

7/1/2008

DATE



SIGNATURE OF SERVER

ADDRESS OF SERVER

200 Russell Street, Hammond, IN 46325

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (e)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

**Robert J. Feldt**

---

**From:** "Barbara Cernick" <bcernick@eichhorn-law.com>  
**To:** <tbsolis@uhl.com>  
**Cc:** "Robert Feldt" <rfeldt@eichhorn-law.com>  
**Sent:** Wednesday, July 02, 2008 1:57 PM  
**Attach:** Yano-NOD.pdf; DAgostino-NOD.pdf; Lubar-NOD.pdf  
**Subject:** Morgan Lewis v. City of East Chicago, Our File No. 411.11197

Sent at the request of Robert J. Feldt, please see the attached Notices Of Deposition. Hard copies will follow by U.S. mail with no cover letter. Thank you. Barbara, Secretary

Barbara R. Cernick  
bcernick@eichhorn-law.com  
Eichhorn & Eichhorn, LLP  
200 Russell Street  
P.O. Box 6328  
Hammond, IN 46325  
(219) 931-0560 - voice  
(219) 931-5370 - facsimile

7/2/2008

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DIVISION OF ILLINOIS

MORGAN, LEWIS & BOCKIUS LLP,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 08-cv-2748
	)	
CITY OF EAST CHICAGO,	)	Judge: Rebecca R. Pallmeyer
	)	Magistrate Judge:
Defendant.	)	Sidney I. Schenkier

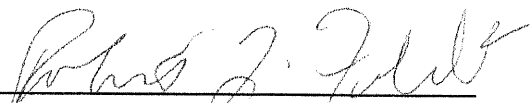
NOTICE OF DEPOSITION

To: Mr. Charles Lubar  
c/o F. Thomas Hecht/Tina B. Solis  
UNGARETTI & HARRIS LLP  
3500 Three First National Plaza  
Chicago, IL 60602

PLEASE TAKE NOTICE that on the 3<sup>rd</sup> day of July, 2008, at the hour of 8:00 a.m., prevailing time, at the offices of Ungaretti & Harris LLP, 3500 Three First National Plaza, Chicago, IL 60602, the undersigned will proceed to take the deposition of Mr. Charles Lubar before a duly authorized court reporter. The deposition will continue without interruption until completed. The deponent is requested to bring the documents listed in the Subpoena previously served upon you.

Respectfully submitted,

**EICHHORN & EICHHORN, LLP**

By:   
One of the attorneys for the Defendant,  
City of East Chicago

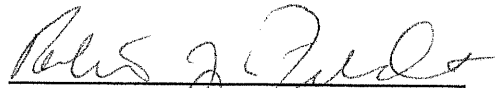
David C. Jensen  
Robert J. Feldt  
**EICHHORN & EICHHORN, LLP**  
200 Russell Street  
P.O. Box 6328  
Hammond, IN 46320  
219-931-0560

**CERTIFICATE OF SERVICE**

I, Robert J. Feldt, certify that on the 2nd day of July, 2008, a true and complete copy of the foregoing Notice Of Deposition was served upon:

Tina B. Solis  
UNGARETTI & HARRIS LLP  
3500 Three First National Plaza  
Chicago, IL 60602  
[tbsolis@uhl.com](mailto:tbsolis@uhl.com)

by depositing a copy in the United States mail, first class postage prepaid, in a properly addressed envelope and by e-mail transmission.

  
Robert J. Feldt

IN THE UNITED STATES DISTRICT COURT

**MORGAN, LEWIS & BOCKIUS LLP,**

**Plaintiff,**

**V.**

CITY OF EAST CHICAGO,

**Defendant.**

**No. 08-cv-2748**

**Judge: Rebecca R. Pallmeyer**

**Magistrate Judge:**

## Sidney I. Schenkier

**NOTICE OF TELEPHONIC DEPOSITION**

To: Ms. Clare D'Agostino  
c/o F. Thomas Hecht/Tina B. Solis  
UNGARETTI & HARRIS LLP  
3500 Three First National Plaza  
Chicago, IL 60602

PLEASE TAKE NOTICE that on the 3<sup>rd</sup> day of July, 2008, at the hour of 1:00 p.m., prevailing time, the undersigned will proceed to take the telephonic deposition of Ms. Clare D'Agostino at the offices of Eichhorn & Eichhorn, LLP, 200 Russell Street, Hammond, IN 46320 with a duly authorized court reporter present. The deposition will continue without interruption until completed. The deponent is requested to have available the documents listed in the Subpoena previously served upon you.

Respectfully submitted,

**EICHHORN & EICHHORN, LLP**

By: Robert J. Field

One of the attorneys for the Defendant,  
City of East Chicago

David C. Jensen

Robert J. Feldt

**EICHHORN & EICHHORN, LLP**

200 Russell Street

P.O. Box 6328

Hammond, IN 46320

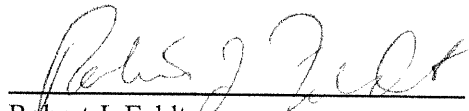
219-931-0560

**CERTIFICATE OF SERVICE**

I, Robert J. Feldt, certify that on the 2nd day of July, 2008, a true and complete copy of the foregoing Notice Of Telephonic Deposition was served upon:

Tina B. Solis  
UNGARETTI & HARRIS LLP  
3500 Three First National Plaza  
Chicago, IL 60602  
[tbsolis@uhlawn.com](mailto:tbsolis@uhlawn.com)

by depositing a copy in the United States mail, first class postage prepaid, in a properly addressed envelope and by e-mail transmission.

  
Robert J. Feldt

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DIVISION OF ILLINOIS

MORGAN, LEWIS & BOCKIUS LLP,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 08-cv-2748
	)	
CITY OF EAST CHICAGO,	)	Judge: Rebecca R. Pallmeyer
	)	Magistrate Judge:
Defendant.	)	Sidney I. Schenkier

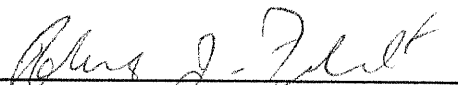
**NOTICE OF DEPOSITION**

To: Ms. Lisa Yano  
c/o F. Thomas Hecht/Tina B. Solis  
UNGARETTI & HARRIS LLP  
3500 Three First National Plaza  
Chicago, IL 60602

PLEASE TAKE NOTICE that on the 3<sup>rd</sup> day of July, 2008, at the hour of 11:00 a.m., prevailing time, at the offices of Ungaretti & Harris LLP, 3500 Three First National Plaza, Chicago, IL 60602, the undersigned will proceed to take the deposition of Ms. Linda Yano before a duly authorized court reporter. The deposition will continue without interruption until completed. The deponent is requested to bring the documents listed in the Subpoena previously served upon you.

Respectfully submitted,

**EICHHORN & EICHHORN, LLP**

By:   
One of the attorneys for the Defendant,  
City of East Chicago

David C. Jensen  
Robert J. Feldt  
**EICHHORN & EICHHORN, LLP**  
200 Russell Street  
P.O. Box 6328  
Hammond, IN 46320  
219-931-0560

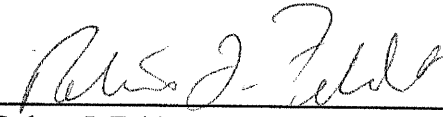


**CERTIFICATE OF SERVICE**

I, Robert J. Feldt, certify that on the 2nd day of July, 2008, a true and complete copy of the foregoing Notice Of Deposition was served upon:

Tina B. Solis  
UNGARETTI & HARRIS  
3500 Three First National Plaza  
Chicago, IL 60602  
[tbsolis@uhlawn.com](mailto:tbsolis@uhlawn.com)

by depositing a copy in the United States mail, first class postage prepaid, in a properly addressed envelope and by e-mail transmission.

  
\_\_\_\_\_  
Robert J. Feldt

**NOTICE FOR  
EXHIBIT D TO THE JULY 10, 2008  
MOTION TO STRIKE THE  
AFFIDAVIT OF  
MS. CLARE D'AGOSTINO  
OF THE DEFENDANT,  
CITY OF EAST CHICAGO**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

MORGAN, LEWIS & BOCKIUS LLP,	)	No. 08-cv-2748
Plaintiff,	)	
v.	)	Judge: Rebecca R. Pallmeyer
CITY OF EAST CHICAGO,	)	Magistrate Judge:
Defendant.	)	Sidney I. Schenkier

**NOTICE OF RESTRICTED AND SEALED DOCUMENTS**  
**PURSUANT TO LR 26.2 and LR 5.8: EXHIBIT D TO MOTION TO STRIKE**

**Statement:** The Defendant, the City of East Chicago, ("East Chicago"), notifies the Court that Exhibit D to its Motion To Strike and related Brief is designated as a restricted document for filing with the Court under seal. Exhibit D includes pages numbered ML 38-40, 48, 49, 50, 51, 53, 54, 58, 59, 61, 63, 68, 90-91, 101-102, 105, 117, 136, 145, 147-148. These pages were produced by the Plaintiff in response to the City of East Chicago's Requests For Production and contain materials designated as restricted and confidential in accordance with the Court's Stipulation and Order Governing the Protection and Exchange of Confidential Material of June 24, 2008 and the Court's Order of July 10, 2008. The pages comprising Exhibit D to East Chicago's July 10, 2008, Motion To Strike and related Brief are provided under seal for filing pursuant to LR 26.2 and LR 5.8.

Pursuant to LR 26.2(c), copies of the June 24, 2008 and July 10, 2008 restricting orders have been included along with the restricted and sealed document presented for filing.

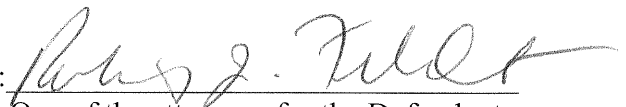
David C. Jensen  
djensen@eichhorn-law.com

Robert J. Feldt  
rfeldt@eichhorn-law.com

**EICHHORN & EICHHORN, LLP**  
200 Russell Street  
P.O. Box 6328  
Hammond, IN 46320  
219-931-0560

Respectfully submitted,

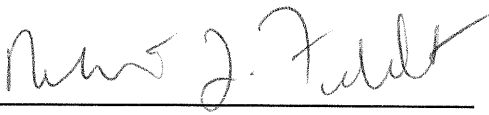
**EICHHORN & EICHHORN, LLP**

By:   
One of the attorneys for the Defendant,  
the City of East Chicago

**CERTIFICATE OF SERVICE**

I, Robert J. Feldt, hereby certify that on the 10<sup>th</sup> day of July, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

F. Thomas Hecht  
Tina B. Solis  
UNGARETTI & HARRIS LLP  
3500 Three First National Plaza  
Chicago, IL 60602  
[fthecht@uhl原因.com](mailto:fthecht@uhl原因.com)  
[tbsolis@uhl原因.com](mailto:tbsolis@uhl原因.com)

  
\_\_\_\_\_  
Robert J. Feldt